

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
GILA COUNTY

THIS AGREEMENT is entered into this date May 10th, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and GILA COUNTY, acting by and through its BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The County is empowered by Arizona Revised Statutes § 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.
3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of Transportation Enhancement activities.
4. The County has selected such project within the boundary of the County. The survey of the project has been completed and the plans, estimates and specifications will be prepared and as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The County, in order to obtain Federal funds for the construction of the project, is willing to provide County funds to match Federal funds in the ratio required or as finally fixed and determined by the County and FHWA, including actual construction engineering (CE) and contingency costs.
6. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the County. Funds expended for the project, are authorized by reason of Federal Law and regulations.
7. This Agreement is an enhancement project for Gila County, which involves design and construction of an entry gate/wall, approximately 100 feet long that will include a sign. The construction will also include landscaping with irrigation, lighting and a circa 400 foot long asphalt bike lane, hereinafter referred to as the "Project". The County has been approved by FHWA and ADOT, to bid and administer the construction of the Project, with the State as the designated agent for the County.

NO. 28907
Filed with the Secretary of State
Date Filed: 5/10/07
Janice K. Brownell
Secretary of State
AB

Design Tracs No. SL604 02D

Estimated Federal Aid funds @ 94.3%	\$61,295.00
Estimated Matching County @ funds @ 5.7%	<u>\$ 3,705.00</u>
Total Estimated Design Costs	\$65,000.00

Construction Tracs No.: SL604 01C

Estimated Federal Aid Funds @ 94.3%	\$287,608.00
Estimated Matching County Funds @ 5.7%	<u>\$ 16,394.00</u>
Estimated Construction Costs	\$304,002.00

***Total Estimated Cost of the Project** **\$369,002.00**

*(Includes contingency, construction engineering administration, and incidentals).

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

- a. Be the authorized agent for the County
- b. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for design and construction.
- c. On behalf of the County, enter into a project Agreement with FHWA covering the work embraced in said design and/or construction contract and request the maximum authorized Federal funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the County will be responsible for any overage.
- d. No more than monthly and upon a thirty-day (30) receipt and approval of an invoice from the County, the State will reimburse the County with Federal funds up to **\$348,903.00** of the Project's cost.
- e. Not be obligated to maintain said Project, should the County fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The County shall:

- a. Upon execution of this Agreement designate the State as authorized agent for the County.
- b. Be responsible for all costs, should costs exceed the maximum Federal funds available, it is understood and agreed that the County will be responsible for any overage whether covered by Federal funding or not and is obligated to pay for all cost overruns above the Federal Aid Caps for design and construction.
- c. Provide to the State the design plans, specifications and such other documents and services required for construction bidding and construction of the Project. Incorporate or resolved State review comments.
- d. Prior to advertising the Project, and per FHWA's conditions to self administer this Project, provide to the State copies of plans and specifications that demonstrate that the project is biddable and constructible.

e. Provide personnel to administer and supervise construction and all construction project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the County up to 94.3% percent of the construction cost. Construction administration costs not participated in the FHWA shall be borne by the County.

f. If the Project is designed using Federal funds and construction has not been started, the County shall reimburse the State for all reimbursed preliminary engineering expenses.

g. Upon approval by FHWA, receipt of the County's matching funds; and with the aid and consent of FHWA, using *Arizona Procurement Procedures* proceed to advertise for, receive and open bids subject to the concurrence of FHWA and the State, and enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Such Project is to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans and Special Provisions.

h. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the County. Such changes require the prior approval of the State.

i. Consent to any inspections performed by the State, provide records or audit any books of the County in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

j. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, and hereby certifies that all obstructions and encroachments have been or will be removed from there prior to the start of construction.

k. Not permit or allow any encroachments upon or private use of, except those authorized by permit, or the right-of-way. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use.

l. Invoice the State for incurred, eligible costs up to the estimated 94.3% of Federal Aid construction and construction administration costs addressed under this Agreement.

m. Furnish all water for landscape installation during the construction phase and all water thereafter necessary to properly maintain the landscape, all at County's expense.

n. Be responsible for maintenance of the entry gate wall, sign and lighting.

o. Be responsible for the landscape lighting system and all associated electrical energy costs.

p. Be responsible for the electrical power and all water necessary to maintain the landscaping and irrigation system.

q. Be responsible for the sweeping operations and litter control activities as needed, on and around the asphalt bike lane, including landscaped areas.

r. Assume responsibility for maintenance of the Project, at its own cost and as an annual item in its budget for perpetual and proper maintenance of all landscape, including, but not limited to landscaping, the irrigation system, including all testing, adjusting, repairing, and operation of the irrigation system.

s. Landscape maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, and established, at the completion of the Project.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement. The County assumes full responsibility for cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the County and that the County hereby agrees to save and hold harmless and indemnify the State from loss of any of its departments, agencies, officers or employees from any and all costs and/or damages incurred by any of the above and from any other damage to any person or property whatsoever, that is caused by any activity, condition or event arising out of the performance, nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees; the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the County agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

3. This Agreement shall remain in force and effect until completion of the work; provided, however, that any provisions for electrical power, landscaping water, maintenance of the gate/wall sign, bike pathway and landscaping shall be perpetual. The State shall not be obligated to maintain said Project as set forth in this Agreement.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

Gila County
Public Works Department
1400 East Ash Street
Globe, Arizona 85501
(928) 402-8507

9. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

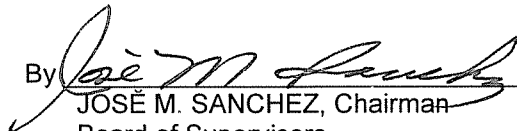
11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

GILA COUNTY

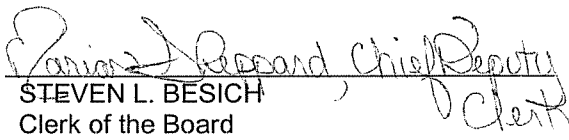
STATE OF ARIZONA

Department of Transportation

By 
JOSE M. SANCHEZ, Chairman
Board of Supervisors

By 
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTEST:

for By 
STEVEN L. BESICH
Clerk of the Board

G:07-002-Gila County-Enhancement SL604 02D& 01C
Asphalt bike lane/entry gate sign
Self administration
First draft February 21, 2007-ly
Revised February 22, 2007-ly

RESOLUTION NO. 07-04-04

Resolution authorizing the Gila County Board of Supervisors to sign an Intergovernmental Agreement with the State of Arizona, Department of Transportation (ADOT), Project Gateway Enhancement for ADOT File No. JPA 07-002, AG Contract No. KR07-0384TRN, TRACS: SL 604 02D &01C

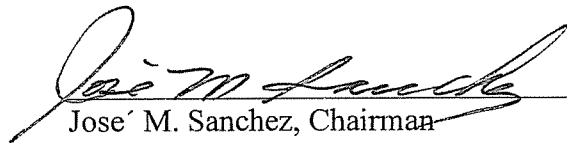
WHEREAS, the parties have entered into the above described IGA Intergovernmental Agreement, and,

WHEREAS, the Intergovernmental Agreement requires a resolution of Gila County to authorize execution of the agreement;

NOW, THEREFORE, BE IT RESOLVED that Gila County Board of Supervisors authorize the chairman Jose' M. Sanchez to execute the Intergovernmental Agreement of Arizona Department of Transportation File No.: JPA 07-002, for the Fairgrounds Gateway Enhancement Grant, **TRACS No.: SL 604 02D &01C**,

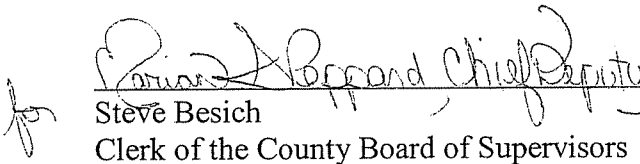
PASSED AND ADOPTED by the Board of Supervisors of Gila County, Arizona, this / ^{24th} day of April 2007.

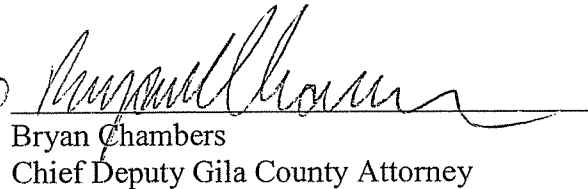
GILA COUNTY BOARD OR SUPERVISORS


Jose' M. Sanchez, Chairman

ATTEST:

APPROVED AS TO FORM:


Steve Besich
Clerk of the County Board of Supervisors


Bryan Chambers
Chief Deputy Gila County Attorney

Dated: 4-24-07

Dated: 4/24/07

GILA COUNTY
ATTORNEY APPROVAL FORM


I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the GILA COUNTY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the COUNTY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 16th day of April, 2007.

A handwritten signature in black ink, appearing to read "Bryan Chambers", written over a horizontal line.

Bryan Chambers
Chief Deputy Gila County Attorney

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR07-0384TRN (**JPA 07-002-I**), an Agreement between public agencies, i.e., The State of Arizona and Gila County, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 7, 2007

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:1012042
Attachment